

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES A. BATTLE Jr.,

Plaintiff,

v.

TUKWILLA POLICE CHIEF HAYNES *et al.*,

Defendant.

CASE NO. C10-5410 RJB

ORDER DIRECTING PLAINTIFF
TO SHOW CAUSE

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. The Court, having reviewed plaintiff's application to proceed in forma paupers, and the proposed complaint, does hereby find and ORDER the following:

(1) Plaintiff informs the court that he has filed five prior actions where he proceeded in forma pauperis. He discloses one of the cases was filed in the United States District Court for the Eastern District of Washington, 09-CV-201JL. Review of this court's records shows plaintiff

1 has in fact filed to proceed in forma pauperis on eight occasions in this court alone and that
 2 several of those actions are currently pending:

- 3 1. Battle v. State of Washington, 05-cv-1365TSZ.
- 4 2. Battle v. Dept. of Corrections, 05-cv-1541JLR.
- 5 3. Battle v. Wick et al, 05-cv-2045RSL/MJB
- 6 4. Battle v. Wick et al, 08-cv-0642RAJ (motion for cert. pending).
- 7 5. Battle v. Travel Lodge Motel et al, 09-cv-0818RAJ/BAT (pending).
- 8 6. Battle v. Vail et al, 10-cv-0343RSL (pending).
- 9 7. Battle v. Vail et al, 10-cv- 5205RBL/KLS (pending).
- 10 8. Battle v. Haynes, 10-cv-5410RJB/JRC (pending).

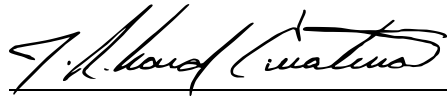
12 When the court includes the case filed in the Eastern District the number of cases filed by
 13 plaintiff is nine -- not five. Further, review of the proposed complaint in this action shows
 14 plaintiff to be raising the same fact pattern and allegations as he has currently pending before the
 15 court in Battle v. Travel Lodge Motel et al, 09-cv-0818RAJ/BAT.

17 In this action plaintiff challenges the actions of Tukwila Police Officers in stopping and
 18 searching him. He raises allegations concerning the same conduct in Battle v. Travel Lodge
 19 Motel et al, 09-cv-0818RAJ/BAT and names the city of Tukwila as a defendant. The court is
 20 concerned plaintiff is abusing the in forma pauperis statute. The court reaches this conclusion
 21 based on the failure of plaintiff to disclose all prior litigation, the number of open actions where
 22 plaintiff is proceeding in forma pauperis, and the repetitive nature of the claims in this action. A
 23 district court has wide discretion in deciding whether to grant an inmate the privilege of
 24 proceeding in forma pauperis and the court may consider prior filings. O'Loughlin v. John Doe,
 25 920 F2d. 614 (9th Cir. 1990).
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1 Plaintiff is ORDERED TO SHOW CAUSE on or before July 30, 2010, why the court
2 should not recommend the application to proceed in forma pauperis be denied based on his
3 failure to disclose all prior litigation, the number of open actions where plaintiff is proceeding in
4 forma pauperis, and the repetitive nature of the action in this case. Plaintiff will need to
5 specifically inform the court why the allegations in this action are were not raised in Battle v.
6 Travel Lodge Motel et al, 09-cv-0818RAJ/ BAT.
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8 The Clerk is directed to send copies of this Order and the General Order to plaintiff.

9 DATED this 28th day of June, 2010.

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12 J. Richard Creatura
13 United States Magistrate Judge
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